



# INTERNATIONAL COURT OF JUSTICE

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## Press Release

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### Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)

**The Court finds that Qatar has sovereignty over Zubarah and Janan Island and that the low-tide elevation of Fasht ad Dibal falls under the sovereignty of Qatar; it finds that Bahrain has sovereignty over the Hawar Islands and the island of Qit'at Jaradah; and it draws a single maritime boundary between the two States**

THE HAGUE, 16 March 2001. Today the International Court of Justice (ICJ), principal judicial organ of the United Nations, delivered its Judgment in the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), the longest in its history.

In its Judgment, which is final, without appeal and binding for the Parties, the Court

- unanimously finds that Qatar has sovereignty over Zubarah;
- finds by twelve votes to five that Bahrain has sovereignty over the Hawar Islands;
- unanimously recalls that vessels of Qatar enjoy in the territorial sea of Bahrain separating the Hawar Islands from the other Bahraini islands the right of innocent passage accorded by customary international law;
- finds by thirteen votes to four that Qatar has sovereignty over Janan Island, including Hadd Janan;
- finds by twelve votes to five that Bahrain has sovereignty over the island of Qit'at Jaradah;
- unanimously finds that the low-tide elevation of Fasht ad Dibal falls under the sovereignty of Qatar;
- decides by thirteen votes to four that the single maritime boundary that divides the various maritime zones of Qatar and Bahrain shall be drawn as indicated in paragraph 250 of the Judgment.

In this latter paragraph, the Court lists the co-ordinates of the points that have to be joined, in a specified order, by geodesic lines in order to form the following single maritime boundary:

- in the southern part, from the point of intersection of the respective maritime limits of Saudi Arabia on the one hand and of Bahrain and Qatar on the other, which cannot be fixed, the boundary follows a north-easterly direction, then immediately turns in an easterly direction, after which it passes between Jazirat Hawar and Janan; it subsequently turns to the north and passes between the Hawar Islands and the Qatar peninsula and continues in a northerly direction, leaving the low-tide elevation of Fasht Bu Thur, and Fasht al Azm, on the Bahraini side, and the low-tide elevations of Qita'a el Erge et de Qit'at ash Shajarah on the Qatari side;

finally it passes between Qit'at Jaradah and Fasht ad Dibal, leaving Qit'at Jaradah on the Bahraini side and Fasht ad Dibal on the Qatari side (see paragraph 222 of the Judgment);

- in the northern part, the single maritime boundary is formed by a line which, from a point situated to the north-west of Fasht ad Dibal, meets the equidistance line as adjusted to take account of the absence of effect given to Fasht al Jarim. The boundary then follows this adjusted equidistance line until it meets the delimitation between the respective maritime zones of Iran on the one hand and of Bahrain and Qatar on the other (see paragraph 249 of the Judgment).

#### Reasoning of the Court

In its Judgment, the Court, after setting out the procedural background in the case, recounts the complex history of the dispute. It notes that Bahrain and Qatar had concluded exclusive protection agreements with Great Britain in 1892 and 1916 respectively, and that this status of protected States had ended in 1971. The Court further cites the disputes which arose between Bahrain and Qatar on the occasion, *inter alia*, of the granting of concessions to oil companies, as well as the efforts made to settle those disputes.

The Court first considers the Parties' claims to Zubarah. It states that, in the period after 1868, the authority of the Sheikh of Qatar over Zubarah was gradually consolidated, that it was acknowledged in the 1913 Anglo-Ottoman Convention and was definitively established in 1937. It further states that there is no evidence that members of the Naim tribe exercised sovereign authority on behalf of the Sheikh of Bahrain within Zubarah. It accordingly concludes that Qatar has sovereignty over Zubarah.

Turning to the Hawar Islands, the Court states that the decision by which the British Government found that those islands belonged to Bahrain does not constitute an arbitral award, but that this does not mean that it is devoid of legal effect. It notes that Bahrain and Qatar consented to Great Britain settling their dispute at the time and finds that the 1939 decision must be regarded as a decision that was binding from the outset on both States and continued to be binding on those same States after 1971. Rejecting Qatar's arguments that the decision was null and void, the Court concludes from the foregoing that Bahrain has sovereignty over the Hawar Islands.

The Court observes that the British decision of 1939 makes no mention of Janan Island, which it considers as forming a single island with Hadd Janan. It points out, however, that in letters sent in 1947 to the Rulers of Qatar and Bahrain, the British Government made it clear that "Janan Island is not regarded as being included in the islands of the Hawar group". The Court considers that the British Government, in so proceeding, provided an authoritative interpretation of its 1939 decision. Accordingly, Qatar has sovereignty over Janan Island, including Hadd Janan.

The Court then turns to the question of the maritime delimitation. It recalls that international customary law is the applicable law in the case and that the Parties have requested it to draw a single maritime boundary. In the southern part, the Court has to draw a boundary delimiting the territorial seas of the Parties, areas over which they enjoy territorial sovereignty (including sea-bed, superjacent waters and superjacent aerial space). In the northern part, the Court has to carry out a delimitation between areas in which the Parties have only sovereign rights and functional jurisdiction (continental shelf, exclusive economic zone).

Concerning the territorial seas, the Court considers that it has to draw provisionally an equidistance line (a line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial sea of each of the two States is measured) and then to consider whether that line must be adjusted in the light of any special circumstances.

Given that the Parties have not specified the baselines to be used, the Court recalls that under the applicable rules of law the normal baseline for measuring the breadth of the territorial sea is the

low-water line along the coast. It observes that Bahrain did not include a claim to the status of archipelagic State in its formal submissions and that the Court is therefore not requested to take a position on this issue. In order to determine what constitutes the Parties' relevant coasts, the Court must first establish which islands come under their sovereignty. Bahrain has claimed to have sovereignty over the islands of Jazirat Mashtan and Umm Jalid, a claim which has not been contested by Qatar. As to Qit'at Jaradah, the nature of which is disputed, the Court considers that it should be considered as an island because it is above water at high tide; the Court adds that the activities which have been carried out by Bahrain are sufficient to support its claim of sovereignty over the island. With regard to low-tide elevations, the Court, after noting that international treaty law is silent on the question whether those elevations should be regarded as territory, finds that low-tide elevations situated in the overlapping area of the territorial seas of both States cannot be taken into consideration for the purposes of drawing the equidistance line. This is true of Fasht ad Dibal, which both Parties regard as a low-tide elevation. The Court then considers whether there are any special circumstances which make it necessary to adjust the equidistance line in order to obtain an equitable result. It finds that there are such circumstances which justify choosing a delimitation line passing on the one hand between Fasht al Azm and Qit'at ash Shajarah and, on the other, between Qit'at Jaradah and Fasht ad Dibal.

In the northern part, the Court, citing its case-law, follows the same approach, provisionally drawing an equidistance line and examining whether there are circumstances which require an adjustment of that line. The Court rejects Bahrain's argument that the existence of certain pearling banks situated to the north of Qatar, and which were predominantly exploited in the past by Bahraini fishermen, constituted a circumstance justifying a shifting of the line. It also rejects Qatar's argument that there is a significant disparity between the coastal lengths of the Parties calling for an appropriate correction. The Court further states that considerations of equity require that the maritime formation of Fasht al Jarim should have no effect in determining the boundary line.

#### Composition of the Court

The Court was composed as follows: President Guillaume; Vice-President Shi; Judges Oda, Bedjaoui, Ranjeva, Herczegh, Fleischhauer, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Buergenthal; Judges ad hoc Torres Bernárdez, Fortier; Registrar Couvreur.

Judge Oda appends a separate opinion to the Judgment. Judges Bedjaoui, Ranjeva and Koroma append a joint dissenting opinion to the Judgment. Judges Herczegh, Vereshchetin and Higgins append declarations to the Judgment. Judges Parra-Aranguren, Kooijmans and Al-Khasawneh append separate opinions to the Judgment. Judge ad hoc Torres Bernárdez appends a dissenting opinion to the Judgment. Judge ad hoc Fortier appends a separate opinion to the Judgment.

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A summary of the Judgment is given in Press Communiqué No. 2001/9bis, to which a summary of the opinions is annexed. The full text of the Judgment and of the opinions is available on the Court's website (<http://www.icj-cij.org>).

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